



South Florida Water Management District

GOVERNING BOARD MEETING MINUTES

March 11, 2010

9:00 AM

Florida Seminole Veterans Building, Brighton Seminole Indian
Reservation

800 E Harney Pond Road
Okeechobee, Florida 34974

Members Present:

Sandy Batchelor

Charles Dauray

Kevin Powers

Eric Buermann, Chair

Shannon Estenoz

Patrick Rooney

Joe Collins

Jerry Montgomery

Glenn Waldman

1. Call to Order - Eric Buermann, Chairman, Governing Board

Chair Buermann called the meeting to order at 9:10 a.m.

Chair Buermann thanked the Seminole Tribe for hosting the Governing Board meeting at the Brighton Reservation.

2. Pledge of Allegiance - Eric Buermann, Chairman, Governing Board

Children from the Pemayetü Emahaku Elementary School led the group in the Pledge of Allegiance.

3. Seminole Tribe of Florida - Andrew J. Bowers, Jr., Brighton Representative for Seminole Tribe of Florida Tribal Council

Kevin Powers said this is a historic event to have a meeting on Tribal land. He reported on the Seminole Veterans facility and the dedicated Seminoles who served in the Armed Forces.

Mr. Powers introduced Andrew Bowers Jr., the Brighton Representative for the Seminole Tribe of the Florida Tribal Council. Mr. Bowers welcomed the Board and the public to the meeting. Chair Buermann presented a proclamation to Mr. Bowers for the Seminole Tribe's long partnership with the District and all the projects that have been achieved over the years.

4. Agenda Addendum - Annette Carter, Director, Office of Governing Board & Executive Services

Annette Carter, Director of Governing Board & Executive Services, read into the record:

Section 120.525, Florida Statutes, allows the District to change the published agenda for good cause shown, as determined by the presiding officer. Based upon that authority, the Chairman has determined that good cause exists to make certain changes to the agenda. These changes are being made in order to permit the Governing Board to efficiently accomplish necessary public business at this meeting and to reflect the items on the agenda that have been requested or suggested to be deleted, revised, supplemented or postponed. These changes have been listed in the Governing Board Addendum available at the entrance to this meeting room.

Ms. Carter announced that under Item 12 - the Duda request for release of canal reservation on approximately 4,238 acres has been deferred until next month. The balance of Item 12 is still on the Consent Agenda.

5. Abstentions by Board Members from items on the Agenda

Mr. Collins abstained from Discussion Agenda Item 41.

Ms. Estenoz read a statement into the record:

Mr. Chairman, last year, I submitted several documents into the record regarding rock mining issues my husband's law center is involved in the Everglades Agricultural Area some of which involve lands included in the second option phase of this contract. Because my husband's work is on-going, I am resubmitting these same documents in anticipation of discussion and voting on this issue today and tomorrow. In addition to repeating last year's disclosure, I would also like to add to the record updated information reflecting the Everglades Law Center's (ELC) work this past year, including for example the organizations 2009 annual report, and additional details about the funding of the Everglades Law Center since my original appointment to the Board in 2007. Much if not all of this information is already in the public domain, but I felt that it was appropriate to put it officially in the record today.

Finally, Mr. Chairman, it was very recently brought to my attention that certain individuals have suggested that my positions and opinions about this land acquisition are influenced by the fact that the Everglades Foundation which supports the acquisition, is the ELCs largest funder, and that my official positions may be influenced by a fear of fiscal retaliation against my husband or his firm.

There is no truth to these suggestions. My decisions about this issue are based entirely on my own opinions, professional expertise and experience, and on a sixteen year career of Everglades advocacy during which I have for at least 12 of those years, personally advocated for the purchase of land in the Everglades Agricultural Area for the benefit of water management and the Everglades. When I learned that such statements were being made, in an abundance of caution, I requested an opinion from the staff of the Florida Commission on Ethics as to whether or not my husbands employment with the ELC and/or its relationship with the Everglades Foundation presents a conflict of interest for me. The resulting opinion, which I am submitting into the record today, is that I do not have a conflict of interest.

6. Water Resources Advisory Commission (WRAC) Report - Charles Dauray, Vice Chair, Lake Okeechobee Sub-Committee

Mr. Dauray chaired the WRAC meeting which was held on March 6th in Sebring, Florida. He thanked Jimmy and Jerry Wohl, Rafter T Ranch, for their hospitality and then reported on the ongoing program of the Florida Ranchlands Environmental Service Project (FRESP).

Mr. Dauray pointed out the importance of both the WRAC and the Lake Okeechobee WRAC. Craig Tepper, Director, Environmental Resource Management, Seminole Tribe of Florida, and WRAC member, provided the WRAC report from the March 6th meeting.

Mr. Collins recognized the officials from Highlands and Glades County who were in the audience. Ms. Barbara Stewart of Highlands County, welcomed the Board and reported on educating young people regarding water-related issues. She requested funding for the Archbold Biological Station.

Mr. Collins praised the Archbold Biological Station and requested, as the Board goes through the budget process, to review this partnership.

Consent Agenda

7. Public Comment on Consent Agenda

There was no public comment on the Consent Agenda.

8. Pull Items for Discussion from Consent Agenda

There were no items pulled from the Consent Agenda for discussion.

9. Board Comment on Consent Agenda

There was no Board comment on the Consent Agenda.

Regulatory Matters

10. Denials

Consent Agreements

Conservation Easement Amendments and Releases

Conversion/Transfer Denials

11. Right of Way Occupancy New Permits

Right of Way Occupancy Permit Modifications

Right of Way Occupancy Permit Requests with Waiver of District Criteria

Right of Way Occupancy Permit Requests for Denial

Everglades Restoration and Capital Projects

- 12. 2010-300** A Resolution of the Governing Board of the South Florida Water Management District approving Staff recommendations for releases of District canal, mineral and road reservations, releases of Trustees of the Internal Improvement Trust Fund (T.I.I.T.F.) canal reservations, and issuance of non-use commitments; providing an effective date. (Vinola Rada, ext. 6158)

Note: Ms. Wood announced on Consent Agenda Item 12, the item related to Duda Ranch was deleted.

- 13. 2010-301** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a six-month contract with Aquent, Inc. under GSA Contract #GS-23F0102M for two on-site technical editors for the 2011 South Florida Environmental Report Project, in the not-to-exceed amount of \$178,560, for which ad valorem funds in the amount of \$76,320 are budgeted; and the remainder is subject to Governing Board approval of the FY2011 budget; providing an effective date. (Contract Number 4600002001) (Stacey Ollis, ext. 2039)
- 14. 2010-302** A Resolution of the Governing Board of the South Florida Water Management District amending Resolution No. 2008-1005, dated October 9, 2008, as previously amended by Resolution No. 2009-929, dated September 10, 2009, whereby the Governing Board authorized the District to grant conservation easements in favor of the Florida Department of Environmental Protection (FDEP) over lands, comprising 1257.58 acres, more or less, located in the Corkscrew Regional Ecosystem Watershed, Lee County, to (i) reduce the portion of Tract No. 09003-774 that will be encumbered by the conservation easement from 20.0 acres, more or less, to 15.72 acres, more or less, and (ii) increase the portion of Tract No. 09003-777 that will be encumbered by the conservation easement from 11.44 acres, more or less, to 15.72 acres, more or less; providing an effective date. (Tom Hanaway, ext. 6668)
- 15. 2010-303** A Resolution of the Governing Board of the South Florida Water Management District authorizing a final purchase offer and eminent domain proceedings for the acquisition of certain land interests, consisting of 2.80 acres, more or less, in Polk County, Florida, which are part of the Kissimmee River Restoration and Headwaters Revitalization Project for which ad valorem (Capital Projects Okeechobee) and dedicated (Florida Forever Trust Fund) funds are budgeted; providing an effective date. (Bob Schaeffer, ext. 2985)
- 16. 2010-304** A Resolution of the Governing Board of the South Florida Water Management District advising the Department of Environmental Protection of the proposed acquisition of land interests containing 2.80 acres for the Kissimmee River Restoration and Headwaters Revitalization Project, in Polk County, and requesting the release of funds from the Florida Forever Trust Fund for acquisition of such land interests, together with statutory costs and associated costs; providing an effective date. (Bob Schaeffer, ext. 2985)

18. **2010-306** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a three year work order contract, subject to successful negotiations with Battelle Memorial Institute, one of four firms selected under Request for Proposal 6000000307 for Quality Assurance/Quality Control and Validation of Scientific Processes and Data (including field sampling and laboratory audits, review of field and lab Standard Operating Procedures, ethics training), in an amount not to exceed the total funding of \$900,000 for all four contracts (4600002056, 4600002057, 4600002058, and 4600002059), for which \$300,000 in ad valorem and dedicated funds are subject to Governing Board approval of the FY11 budget; and the remainder is subject to Governing Board approval of the FY12-13 budgets; providing an effective date. (Contract Number 4600002056) (Michael Wright, ext. 4523)
19. **2010-307** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a three year work order contract, subject to successful negotiations with HSW Engineering, Inc., one of four firms selected under Request for Proposal 6000000307 for Quality Assurance/Quality Control and Validation of Scientific Processes and Data (including field sampling and laboratory audits, review of field and lab Standard Operating Procedures, ethics training), in an amount not to exceed the total funding of \$900,000 for all four contracts (4600002056, 4600002057, 4600002058, and 4600002059), for which \$300,000 in ad valorem and dedicated funds are subject to Governing Board approval of the FY11 budget; and the remainder is subject to Governing Board approval of the FY12-13 budgets; providing an effective date. (Contract Number 4600002057) (Michael Wright, ext. 4523)
20. **2010-308** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a three year work order contract, subject to successful negotiations with Rare Earth Sciences d/b/a HSA Engineers and Scientists, one of four firms selected under Request for Proposal 6000000307 for Quality Assurance/Quality Control and Validation of Scientific Processes and Data (including field sampling and laboratory audits, review of field and lab Standard Operating Procedures, ethics training), in an amount not to exceed the total funding of \$900,000 for all four contracts (4600002056, 4600002057, 4600002058, and 4600002059), for which \$300,000 in ad valorem and dedicated funds are subject to Governing Board approval of the FY11 budget; and the remainder is subject to Governing Board approval of the FY12-13 budgets; providing an effective date. (Contract Number 4600002058) (Michael Wright, ext. 4523)
21. **2010-309** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a three year work order contract, subject to successful negotiations with Laboratory Data Consultants FL, Inc., one of four firms selected under Request for Proposal 6000000307 for Quality Assurance/Quality Control and Validation of Scientific Processes and Data (including field sampling and laboratory audits, review of field and lab Standard Operating Procedures, ethics training), in an amount not to exceed the total funding of \$900,000 for all four contracts (4600002056, 4600002057, 4600002058, and 4600002059), for which \$300,000 in ad valorem and dedicated funds are subject to Governing Board approval of the FY11 budget; and the remainder is subject to Governing Board approval of the FY12-13 budgets; providing an effective date. (Contract Number 4600002059) (Michael Wright, ext. 4523)

22. **2010-310** A Resolution of the Governing Board of the South Florida Water Management District to authorize a ninety-nine year lease of land interests comprising 35.8 acres, more or less, with the City of Clewiston for recreational use, at no cost to the District; providing an effective date. (Contract No. 4600002053) (Ruth Clements, ext. 6271/Andrea Stringer, ext. 6742)

Executive Office

23. **2010-311** A Resolution of the Governing Board of the South Florida Water Management District to authorize District staff to file suit to enforce District statutes and rules, and to pursue any appropriate damages and remedies, and take all appropriate action, including the authority to settle the matter, subject to the approval of the Executive Director, against Finca Vigia, LLC, and any other appropriate or necessary parties, in Hendry County Circuit Court or other appropriate forum, regarding the property located at 15511 CR 846, Sections 12 & 13, Township 47 South, and Range 31 East, Clewiston, Hendry County, Florida 34142 (PROPERTY). (Alison Kelly, ext. 2977)
24. **2010-312** A Resolution of the Governing Board of the South Florida Water Management District authorizing the transfer of funds within the District FY2009-2010 budget as shown on the attachment hereto; providing an effective date (Mike Smykowski, ext. 6295).
25. **2010-313** A Resolution of the Governing Board of the South Florida Water Management District to authorize District staff to file suit to enforce District Statutes, Orders and Rules, and to pursue any appropriate damages and remedies, and take all appropriate action, including the authority to settle the matter, subject to the approval of the Executive Director, against Big Island Excavating, Inc., William McDaniel, Jr., and any other appropriate or necessary parties, in Palm Beach County Circuit Court or other appropriate forum. (Robert Panse, ext. 6279)
26. **2010-314** A Resolution of the Governing Board of the South Florida Water Management District to authorize District staff to file suit to enforce District Statutes and Rules, and to pursue any appropriate damages and remedies, and take all appropriate action, including the authority to settle the matter, subject to the approval of the Executive Director, against Hendry Turf, LLC and any other appropriate or necessary parties, in the 20th Judicial Circuit in and for Hendry County or other appropriate forum, providing an effective date. (Jennifer Bokankowitz, ext. 2258)

Regulatory and Public Affairs

27. **2010-315** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into an indefinite term memorandum of agreement with the U.S. Environmental Protection Agency to minimize the potential effects of groundwater contamination within the District's jurisdiction that are impacted or potentially impacted by Superfund sites at no cost to the District; providing an effective date. (Contract No. 4600002060) (Dean Powell, ext. 6787)

28. Authorize publication of a Notice of Rule Development in the Florida Administrative Weekly (FAW) to amend Rule 40E-3.035, F.A.C., to: 1) incorporate by reference the Well Construction Program Delegation Agreements between the South Florida Water Management District and the following County Health Departments: Broward, Glades, Highlands, Lee, Miami-Dade, Orange, Osceola, Polk, and Palm Beach Counties; 2) incorporate by reference the First Amendments to existing Well Construction Program Delegation Agreements between the South Florida Water Management District and the following governmental entities: the City of Cape Coral and the County Health Departments for Collier, Hendry, Martin, Okeechobee, Osceola, and St. Lucie Counties; and, 3) incorporate by reference the Second Amendments to the existing Well Construction Program Delegation Agreements between the South Florida Water Management District and the following County Health Departments: Okeechobee, Martin, and St. Lucie Counties. (Dean Powell, ext. 6787)

Corporate Resources

29. **2010-316** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a three-year contract with Postal Center International, Inc. The lowest responsive and responsible bidder, for District duplication and bindery services for \$540,000, of which \$150,000 of ad valorem funds is budgeted in FY10 and the remainder is subject to Governing Board approval of the FY11-13 Budgets; providing an effective date. (SAP Contract Number 4600002072) Project sponsor: Jim Mandolfo, ext 6072.)

Operations and Maintenance

31. **2010-318** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 32 month contract with Ronald Mierau, for subject matter expertise for the Operations Decision Supports System (ODSS) to ensure that the operational and business rule knowledge used by District Water Managers to manage the Surface Water Network is captured and incorporated into ODSS and authorize a Waiver of Competition as an exception to the general standards of competition, in the not-to-exceed amount of \$264,000 for which \$72,000 is budgeted and the remainder is subject to Governing Board approval of the FY11-FY13 budgets; providing an effective date. (Contract Number 4600002034) (Lakin Flowers, ext. 2639)
32. **2010-319** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 258 day contract with Interlaken Incorporated, the lowest responsive and responsible bidder, for the S-6 Service Bridge Upgrades, in the amount of \$581,000 of which ad valorem funds of \$427,000 are budgeted and the remainder is subject to Governing Board approval of the FY11 budget; providing an effective date. (Contract Number 4600002083) (Tzufit Boyle, ext. 4071)
33. **2010-320** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 5 month contract with Florida Power & Light, for the S-135 Electrical Power Services, and authorize a special procurement as an exception to the general standards of competition, in an amount not-to-exceed \$316,199 for which ad valorem funds are budgeted; providing an effective date. (Contract Number 4600002064) (Robin Deaton, ext. 2628)

- 34. 2010-321** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 180 day contract with C&D Construction Incorporated, the lowest responsive and responsible bidder, for the S-62 Concrete Repairs, in the amount of \$747,800 for which ad valorem funds are budgeted; providing an effective date. (Contract Number 4600002081) (Alex Garcia, ext. 3724)
- 35. 2010-322** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 300 day contract with Close Construction Incorporated, the lowest responsive and responsible bidder for the S-331 Pump Station Hardening in the amount of \$563,460 for which ad valorem funds of \$314,200 are budgeted and the remainder is subject to Governing Board approval of the FY11 budget; providing an effective date. (Contract Number 4600002079) (Tzufit Boyle, ext. 4071)
- 36. Board Vote on Consent Agenda**

Note: Ms. Wood announced on Consent Agenda Item 12, the release of canal reservation related to Duda Ranch was deleted.

Motion made by Jerry Montgomery, seconded by Shannon Estenoz to Approve the following item(s): 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35

Vote called. Voting yes: Jerry Montgomery, Shannon Estenoz, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray, Kevin Powers, Patrick Rooney, Glenn Waldman. Motion passed.

Workshop Agenda

Regulatory and Public Affairs

- 37. Central Florida Coordination Area Activity Update** - Dean Powell, Deputy Director, Water Supply Management Department (ext. 6787)

Dean Powell, Deputy Director, Water Supply Management Department, presented an update on the Central Florida Coordination Area (CFCA) initiative. He reported the Southwest Florida Water Management District, St. Johns River Water Management District, and the South Florida Water Management District's groundwater withdrawals may trigger resource constraints in the adjacent water management districts. The three water management districts have developed the Central Florida Coordination Area Action Plan to address these issues. Mr. Powell reviewed the plan, the master schedule, and the CFCA interim rules and the impacts from groundwater withdrawals. He then explained the potential rulemaking components and the long-term rules to be adopted by 12-31-2012.

Mr. Dauray questioned the funding for this project and requested staff pursue working with the two other water management districts on partnering for this funding.

Mr. Powers applauded the coordinated efforts between the three water management districts. He asked about the boundaries of the area and whether they are geographic or political boundaries.

Mr. Powell explained they are hydrological and geographical boundaries.

Mr. Montgomery said this is a wonderful example of where we have utilities working cooperatively together and said it is important to keep this effort moving forward.

Mr. Collins asked if the data that is being collected is to find what is causing the impacts or are the impacts a result of deep water withdrawals from our District.

Mr. Powell explained it is the accumulated water withdrawals from all of the water management districts. Staff are looking at this data to possibly develop a wellfield south of this area. He said there needs to be further data collected.

Public Comment: Melissa Meeker, citizen, supports the need for more data and requested the Board base their decision on science.

38. Polk County Alternative Water Supply Master Plan - Gary Fries, P.E., Director, Polk County Utilities

Gary Fries, Director, Polk County Utilities, presented information on the Polk County Comprehensive Water Supply Master Plan. Mr. Fries reported there are 17 municipalities and 6 county utility areas in Polk County, and the conventional water supply sources are becoming limited. He then reported on the CFCA rules, existing water supplies, the Polk County 10-year water supply plan, and the project goals.

Gary ReVoir reported on the water demand projections and the future implementation plan.

Mr. Fries then reported on the continued projects such as the Southeast wellfield, Northwest reclaimed water storage reservoir, the agreement with TECO, the Holly Hill reclaimed water storage facility and the funding for these projects.

Mr. Montgomery said there is great work going on in central Florida where there is challenging water supply issues. He said the collaboration efforts between this group and especially STOPR is wonderful.

Public Comment: Wayne Nelson, citizen, commented on the Kissimmee River/Okeechobee Basin Report from 1971 and stated his concern of urgency for the protection of Lake Okeechobee.

39. Dispersed Water Management and Treatment Update- Benita Whalen, Deputy Director, Environmental Resource Regulation, Sarah Lynch, World Wildlife Fund, and Len Shabman, Co-Director, Florida Ranchlands Environmental Services Program (FRESP) (ext. 2957)

Benita Whalen, Deputy Director, Environmental Resource Regulation, presented an update on the Dispersed Water Management and Treatment Program. She reported on the approaches with the landowners (payment for services, easements and cost-share).

Sarah Lynch, World Wildlife Fund, presented an update on the Florida Ranchlands Environmental Services Project (FRESP). She reported on the partners involved in the project and the key program concepts which include:

- Working ranch landscapes
- Modification to existing water management structures and strategies
- Fixed term contracts
- Documented services
- Above and beyond regulatory requirements
- Profit center for ranches

The Governing Board and Water Resources Advisory Commission support for FRESP led to the Payment for Environmental Services design.

Ms. Whalen then reported on the St. Lucie and Indian River Counties Resource Study which focuses on capturing water being released to tide for water supply purposes. Ms. Whalen explained the C-25 water farming approach recommendation.

Mr. Dauray questioned the funding for this project and requested commitments from the other parties involved.

Ms. Estenoz said she is very supportive of this program.

Mr. Collins provided background information on this program and praised those involved for their continuous work and great partnership.

Mr. Montgomery praised staff and those involved who have directly communicated to the farmers. He said this is a wonderful program.

Mr. Powers said this is one of the most promising opportunities for water storage. Once all the details are worked out, this program will take off.

Mr. Dauray also supports this program but had concerns about the funding.

Public Comment: Doug Bournique, Indian River Citrus League, supports this water farming concept and said this offers a golden opportunity to take a lot of water and put it to good use.

Public Comment: Bob Ulevich, St. Johns Improvement District, said the reconnection and water farming is a good foothold into the future. He'd like some clarity to the concept of reconnecting the District as in the original flood control acts of 1948 and 1954.

Public Comment: Michael Minton, Dean Mead, commented on the reconnect of the C-25 plan and embracing the concept of utilizing the FRESP approach as an interim approach and not in lieu of implementing the C-25 reconnect.

Public Comment: Charles Lee, Audubon of Florida, requested within the next few months, Audubon be able to do a detailed presentation on their ideas for dispersed water storage. He said there is eagerness from landowners to be part of the solution to the water management problem of water storage.

Public Comment: Pete Quasius, Audubon, commented on the C-43 and water storage for the Caloosahatchee and Babcock Ranch.

Discussion Agenda

Everglades Restoration and Capital Projects

- 40. 2010-323** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a three-year and nine-month contract with Florida Power and Light Company for the C-44 Reservoir/STA Project to provide power distribution services in the not-to-exceed amount of \$1,200,000 of which dedicated funds (Save Our Everglades Trust Fund) in the amount of \$600,000 are budgeted and the remainder is subject to Governing Board approval of future fiscal year budgets; providing an effective date. (Contract Number 4600002077) (Ruth Clements, ext. 6271 and Sue Ray, ext. 4019)

No presentation provided.

Motion made by Joe Collins, seconded by Jerry Montgomery to Approve the following item(s): 40

Vote called. Voting yes: Joe Collins, Jerry Montgomery, Sandy Batchelor, Eric Buermann, Charles Dauray, Shannon Estenoz, Kevin Powers, Patrick Rooney, Glenn Waldman. Motion passed.

Executive Office

- 61.** Enter a Final Order accepting the Administrative Law Judges Order Relinquishing Jurisdiction and Closing File issued on February 2, 2010, and Dismiss without Prejudice the Amended Petition filed by Petitioner Palm City Civic Organization, Inc. (Keith Williams, ext. 2791)

Keith Rizzardi, Managing Attorney, presented information on this agenda item and the need for a formal action to close the case.

Governing Board action:

-Approve Issuance of an Order Dismissing Petition without Prejudice and Closing File.

-Chair will sign the Final Order.

Motion made by Jerry Montgomery, seconded by Shannon Estenoz to Approve the following item(s): 61

Vote called. Voting yes: Jerry Montgomery, Shannon Estenoz, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray, Kevin Powers, Patrick Rooney, Glenn Waldman. Motion passed.

- 41.** Consideration of an extension to the Certificates of Participation validation deadline contained within the Amended and Restated Agreement for Sale and Purchase between the United States Sugar Corporation, SBG Farms, Inc., Southern Gardens Groves Corporation and the South Florida Water Management District from March 31, 2010 to September 30, 2010 (Tom Olliff, ext. 2132) (**Time Certain: 10:00 AM**)

Mr. Collins abstained from Discussion Agenda Item 41.

Tom Olliff, Assistant Executive Director, presented information for the consideration of an extension to the Certificates of Participation validation deadline which would be an additional six months from the March 31st deadline. This would allow the staff to work through the remaining challenges and legal proceedings, with some assurance the agency will be able to get the validation done.

Ms. Wehle reiterated what Mr. Ammon said to the Board at the Governing Board Workshop:

This Agency has challenges in both the Everglades Agricultural Area and the C-139 Basin. The Board has faced challenging issues of backpumping into Lake Okeechobee. The Board has an upcoming challenge of identifying additional storage in the Phase 2 Project Implementation Report of the C-43. She stated we continue to have discussions about water storage and the water quality challenges in the EAA area. Ms. Wehle wanted the Board to make sure they understand the land identified by staff for this particular contract today was selected to address these issues.

Ms. Wehle explained that the agenda item is not addressing public purpose of the land acquisition and requested the Board focus on extending the agreement to address the COPs validation deadline.

Public Comment: Commissioner Tom Bausch, Town of Sewalls Point, commented on the pulse releases into the St. Lucie Estuary and supports the extension of the contract.

Public Comment: Marti Daltry, Sierra Club, commented on water quality of the Caloosahatchee River and the pulse releases of water from Lake Okeechobee into the estuary. She supports the extension.

Public Comment: Helen Oeenchain, Highlands County, supports the extension of the contract.

Public Comment: Sara Fain, NPCA/Everglades Coalition, supports the extension of the contract for the restoration of the Everglades.

Public Comment: Manley Fuller, Florida Wildlife Federation, supports the extension of the contract.

Public Comment: Dale Gillis, Highlands County Audubon Society, supports the extension of the contract for restoring the Everglades.

Public Comment: Ted Guy, Rivers Coalition, supports the extension of the contract.

Public Comment: Lois James, Riverwatch, supports the extension of the contract.

Public Comment: George Jones, Indian Riverkeeper, supports the extension of the contract and moving the CERP projects forward.

Public Comment: Chuck Locke, self, supports the extension of the contract.

Public Comment: Drew Martin, Sierra Club, supports the extension of the contract.

Public Comment: Barbara Miedema, Sugar Cane Growers Cooperative, commented on the fiduciary responsibility of the Board and requested the Board terminate this contract.

Public Comment: Felipe Moncarz, Miccosukee Tribe of Florida, reminds the Board of the core mission of the District and does not support this extension.

Public Comment: Martha Musgrove, citizen, supports the acquisition of the property and the extension of contract.

Public Comment: Mark Perry, Florida Oceanographic Society, commented on water discharges into the estuaries and supports the extension of the contract.

Public Comment: Ellen Petersen, Save Our Creeks, supports the extension of the contract.

Public Comment: Cynthia Plockelman, Audubon Society of the Everglades, supports the extension of the contract.

Public Comment: Pete Quasius, Audubon Collier, supports the extension of the contract.

Public Comment: Lara Reynolds, Tropical Audubon Society, supports the extension of the contract.

Public Comment: Dawn Shirreffs, Clean Water Action, supports the extension of the contract.

Public Comment: Matthew Schwartz, Sierra Club, supports the extension of the contract.

Public Comment: Charles Shinn, Florida Farm Bureau Federation, supports Everglades restoration but opposes the extension of the contract.

Public Comment: David Simms, Sierra Club, supports the extension of the contract.

Public Comment: Megan Tinsley, Audubon of Florida, supports the extension of the contract.

Public Comment: Jonathan Ullman, Sierra Club, supports the extension of the contract.

Public Comment: Bob Voisinet, citizen, supports the extension of the contract.

Public Comment: Rae Ann Wessel, Sanibel Captiva Conservation Foundation, supports the extension of the contract.

Public Comment: Vaughan Whitesides, citizen, supports the extension of the contract.

Public Comment: Karl Wickstrom, Rivers Coalition, supports the extension of the contract.

Public Comment: Kurt Fordham, Everglades Foundation, supports the extension of the contract.

Public Comment: Joanne Davis, 1000 Friends of Florida, supports the extension of the contract.

Public Comment: Ian Pollack, citizen, supports the extension of the contract.

Public Comment: Michael Collins, citizen, commented that somewhere along the way the Governing Board lost control of the process and this is an opportunity to regain that control. The language in the December 2008 contract stated that the sole and absolute authority rested with the Governing Board to make the decision if the acquisition is financially viable. The language in the final contract does not say that. Mr. Collins stated the Governing Board is the sole protector of the taxpayer and responsible for the health and safety of more than 6 million people in South Florida. He explained that the dates do not matter but firmly believes the decision needs to be made by the Governing Board and urged the Governing Board to include the original language in the final contract.

Mr. Montgomery noted that he supported this project and said, in the December vote, the Board made it clear that the Board needed to protect their sole discretion to make the financial decisions. At that time, the discussion was on debt financing and his understanding was when the language was amended, it only changed the language of the \$5M payment that capped the exposure. Referencing a letter from Mr. Joseph Klock, Mr. Montgomery requested legal confirmation that, under the amended agreement, the Governing Board retains complete autonomy to make financial decisions to protect constituents of the SFWMD. The amended agreement should enable the Governing Board the flexibility to move forward to make the deal happen but not relinquish any fiduciary responsibility. He requested an explanation of the "out" language. He also commented on the ability to obtain financing at this point.

Ms. Wood called on Sam Corillo of Bryant, Miller and Olive, to explain the language. Mr. Corillo explained to the Board the protections that they have in the contract.

Mr. Montgomery requested confirmation that the Board still retains complete autonomy to make decisions and that the Board cannot be forced to raise taxes or make other operating decisions.

Mr. Corillo explained the language that dealt with the ability to afford the financing to purchase the property without affecting the missions or functions of the District.

Chair Buermann questioned whether there is any basis by which a court could order the Board to raise taxes.

Ms. Wood explained she did not want to discuss legal exposure but stated the District is protected with this contract under the affordability clause. If the Board makes a reasonable determination as to the affordability and makes those decisions, based upon the conditions from where we were, where we are, and where we will be going, the Board will be in a good position to make that determination to their satisfaction.

Mr. Waldman asked for further clarification of the amendment to the contract regarding the liability cap.

Mr. Corillo said the \$5M liability cap is limited to the affordability provisions in the contract.

There was continued discussion on affordability, making the determination to the Governing Board's satisfaction, statutory and other legal obligations, and ad valorem taxes.

Ms. Wood explained she can go back to U.S. Sugar to get clarification on the conditions contained in Paragraph 7 A-18 referencing ad valorem millage rates. There was discussion on other cases where the courts mandated an increase in taxes.

Mr. Waldman asked about the timeframe of the extension. He questioned the possibility that the Florida Supreme Court could hear oral arguments on April 7th and, within the next month or two, before they take a recess, send it back for some type of legal fact findings.

Frank Bartolone, Attorney, said it is possible but he has not seen a bond validation case where the Supreme Court has sent it back to the trial court but it may take months for the Supreme Court to make a decision. Mr. Bartolone said the attorneys would file with the Supreme Court that there has been a six month extension to the contract if the extension is approved.

There was discussion on the timeframe of the extension.

Mr. Dauray reported on the economic issues and the vulnerability to the west coast of Florida due to water releases into the Caloosahatchee Estuary. He reported on affordability of this contract and weighing the opportunity versus the affordability. He stated when it comes to affordability on the west coast, we cannot afford to not proceed with this contract. He supports the extension of this contract.

Ms. Estenoz also supports the extension of this contract. She also stated this Board is 100 percent committed to public health and safety.

Mr. Rooney explained the concerns of the Board related to the legal language and affordability of the contract. He wanted to let the public know there is a lot of discussion between Board members and staff regarding these issues but it is only at the public meetings where Board members can discuss this together. He explained he also wants to get this done but also remarked on the fiduciary responsibility and the core mission of the District.

Chair Buermann explained that this will not be the last discussion on the acquisition but the extension does give some certainty to both parties, plus gives time for the Supreme Court to make their decision.

Motion made by Charles Dauray, seconded by Shannon Estenoz for the Board to direct the Chair or Vice Chair to send a letter to U.S. Sugar Corporation offering to extend the outside date of the Agreement until September 30, 2010 and to execute any documents needed to effectuate that extension. Vote called. Voting yes: Sandy Batchelor, Kevin Powers, Charles Dauray, Eric Buermann, Pat Rooney, Jerry Montgomery, Shannon Estenoz and Glenn Waldman. Abstained: Joe Collins. Motion passed.

42. Consideration of (1) Administrative Law Judge P. Michael Ruffs Recommended Order, and (2) timely filed Exceptions to the Recommended Order and Responses thereto in DOAH Case No. 09-4996BID, Close Construction, Inc. v. South Florida Water Management District and Worth Contracting, Inc., regarding the Districts decision to award a contract for the refurbishment and automation of District structures G-123 and S-34 to Worth Contracting, Inc. (Sheryl G. Wood, General Counsel, ext. 6976) **(Time Certain: 11:00 AM)**

Chair Buermann turned the meeting over to Vice Chair Montgomery because he was not in attendance at the February Board meeting.

Ms. Wood presented the procedural history of Close Construction, Inc.v. SFWMD and Worth Contracting, Inc.,

Mr. Buermann, Ms. Batchelor and Mr. Waldman did not participate or vote on this matter.

Motion made by Joe Collins, seconded by Charles Dauray to approve the motion as follows:

As set forth in the February 5, 2010 confidential memorandum from the General Counsel to the Governing Board:

- Reject District Staff's and Intervenor's Exceptions to Recommended Order;
- Adopt the preliminary matters addressed on pages 1 through 6 of the ALJs Recommended Order except the correction to the list of exhibits admitted into evidence;
- Adopt all of the Findings of Fact contained in the ALJs Recommended Order;
- Adopt all of the Conclusions of Law contained in the ALJs Recommended Order, except for that portion of Conclusion of Law No. 49 wherein the ALJ determined Close Construction to be a responsible bidder;

Reject the ALJs Recommendation to award the contract to Close Construction, Inc.; and

Reject all of the bids submitted in response to the RFB No. 6000000262.

Vote called. Voting yes: Charles Dauray, Shannon Estenoz, Patrick Rooney, Jerry Montgomery, Joe Collins, Kevin Powers. Motion passed.

Public Comment: Chris Close, Close Construction, commented on the District's bid process and procurement manual.

- 43. 2010-324** A Resolution of the Governing Board of the South Florida Water Management District authorizing a settlement and the execution of documents required to effectuate a settlement in connection with an inverse condemnation action involving lands within the Biscayne Coastal Wetlands Project, styled Cutler Properties, LC v. South Florida Water Management District, filed in the 11th Judicial Circuit Court in and for Miami-Dade County, Florida, Case No. 08-46701 CA5; providing an effective date. (Keith Rizzardi, ext. 6274) **(Time Certain: 11:30 AM)**

Keith Rizzardi, Managing Attorney, presented information on the settlement agreement and execution of documents required to effectuate a settlement in connection with an inverse condemnation action involving lands within Biscayne Coastal Wetlands Project, Cutler Properties., LC.

Public Comment: Sara Fain, NPCA, thanked the Board for approving this resolution for the protection of land in South Florida.

Public Comment: Beth Kibler, Old Cutler South, thanked staff and supporters from the municipalities and environmental communities for supporting them through this process.

Public Comment: Joan Lawrence, Department of Interior, thanked the Board for moving forward with this purchase.

Public Comment: Drew Martin, Sierra Club, supports the purchase of this property.

Public Comment: Lara Reynolds, Tropical Audubon Society, thanked the Board for voting to purchase this property.

Public Comment: Megan Tinsley, Audubon of Florida, supports the purchase of this property.

Public Comment: Jonathan Ullman, Sierra Club, supports the purchase and protection of this property.

Public Comment: Eduardo Varona, citizen, thanked the Board for listening to the citizens of Cutler Property and the protection of these wetlands.

Chair Buermann stated his support for this purchase.

Sandy Batchelor complimented everyone involved in this land acquisition.

Motion made by Shannon Estenoz, seconded by Jerry Montgomery to Approve the following item(s): 43

Vote called. Voting yes: Shannon Estenoz, Jerry Montgomery, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray, Kevin Powers, Patrick Rooney, Glenn Waldman. Motion passed.

- 44. 2010-325** A Resolution of the Governing Board of the South Florida Water Management District to approve the acquisition of land interests containing 129.88 acres, more or less, in Miami-Dade County, for the Biscayne Bay Coastal Wetlands CERP Project, in the amount of \$24,500,000, and associated costs for which dedicated funds (Save Our Everglades Trust Fund) are budgeted; providing an effective date. (Bob Schaeffer, ext. 2985)

Ruth Clements, Director, Land Acquisition Department, presented information on this agenda item. She reported on the environmental assessment of the property.

Motion made by Jerry Montgomery, seconded by Shannon Estenoz to Approve the following item(s): 44

Vote called. Voting yes: Jerry Montgomery, Shannon Estenoz, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray, Kevin Powers, Patrick Rooney, Glenn Waldman. Motion passed.

- 45. 2010-326** A Resolution of the Governing Board of the South Florida Water Management District requesting release of funds from the Save Our Everglades Trust Fund by the Department of Environmental Protection for the acquisition of land interests containing 129.88 acres, more or less, in Miami-Dade County, Florida, for the Biscayne Bay Coastal Wetlands CERP Project, in the amount of \$24,500,000, and associated costs; providing an effective date. (Bob Schaeffer, ext. 2985)

Ruth Clements, Director, Land Acquisition Department, presented information on this agenda item.

Motion made by Sandy Batchelor, seconded by Shannon Estenoz to Approve the following item(s): 45

Vote called. Voting yes: Sandy Batchelor, Shannon Estenoz, Eric Buermann, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney, Glenn Waldman. Motion passed.

Regulatory and Public Affairs

- 46.** Deny Environmental Resource Permit Application 050406-1 for conceptual approval of a surface water management system to serve a 138.36 acre residential development known as Cutler Properties (Miami-Dade County) (Robert M. Brown, ext 6283)

Howard Nelson, Attorney, Cutler Properties, thanked the Board for their consideration and staff for working so diligently in getting the documents in order from last month to now.

He offered a waiver of timeframe for a permit decision until April 8th, 2010. At that time he will withdraw the permit application.

47. Enter a Final Order Rescinding the following Water Shortage Orders:

A) Order No. 2007-870-DAO-WS, which imposed Modified Phase III Landscape Irrigation Restrictions (partial rescission);

B) Order No. 2008-166-DAO-WS, which imposed Modified Phase II Landscape Irrigation Restrictions within specified areas of the entire District;

C) Order No. 2008-409-DAO-WS, which imposed Modified Phase II Landscape Irrigation Restrictions on users within the Indian Prairie Basins, Lakeshore Perimeter Basin, and portions of the Kissimmee River Valley Water Use Basin;

D) Order No. 2009-146-DAO-WS, which imposed Modified Phase II Landscape Irrigation Restrictions for portions of Collier, Hendry and Lee Counties;

E) Order No. 2009-147-DAO-WS, which imposed Modified Phase II Landscape Irrigation Restrictions for those portions of the S-Dade Water Use Basin located within Miami-Dade and Monroe Counties;

F) Order No. 2009-269-DAO-WS, which imposed Modified Phase II Landscape Irrigation Restrictions for Osceola County;

G) Order No. 2009-273-DAO-WS, which imposed Modified Phase II Landscape Irrigation Restrictions on users within that portion of the Reedy Creek Improvement District that is located within Orange County;

H) Order No. 2009-285-DAO-WS, which placed all landscape irrigation users within Orange County under the provisions set forth in St. Johns River Water Management District, Rule 40C-2.024(2), F.A.C.; and,

I) Order No. 2007-108-DAO-WS, which imposed operational restrictions on the City of Dania Beach.

(Terrie Bates, Ext. 6952)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Joe Collins to Approve the following item(s): 47

Vote called. Voting yes: Shannon Estenoz, Joe Collins, Sandy Batchelor, Eric Buermann, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney, Glenn Waldman. Motion passed.

Operations and Maintenance

48. 2010-327 A Resolution of the Governing Board of the South Florida Water Management District to authorize an amendment to work order contract 4600000435 with Helicopter Applicators, Incorporated for Vegetation Management Aerial Application Services, to increase the not-to-exceed contract value by \$5,000,000 for the remainder of the contract term or November 01, 2011, for which ad valorem funds in the amount of \$1,000,000 are budgeted and the remainder is subject to Governing Board approval of the FY11 budget; providing an effective date. (Contract Number 4600000435-A03) (Ellen Donlan, ext. 6130)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Kevin Powers to Approve the following item(s): 48

Vote called. Voting yes: Shannon Estenoz, Kevin Powers, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray, Jerry Montgomery, Patrick Rooney, Glenn Waldman. Motion passed.

49. Public Comment

- Regulatory Policy Issues

- General Public Comment

There was no public comment.

Staff Reports

50. General Counsel Report - Sheryl Wood

No report provided.

51. Executive Director's Report - Carol Wehle

- Report on Permits Issued by Authority Delegated to Executive Director from February 1 to February 28, 2010

Ms. Wehle reported on the permits issued by authority delegated to the Executive Director from February 1 to February 28, 2010. A copy of the report was given to each Board member.

Ms. Wehle invited the Board to attend the Chili cookoff which will be held at District headquarters on March 18th. Proceeds will go to the ALS Foundation.

52. Board Comment

There was no Board comment.

Adjournment

60. Adjourn

Chair Buermann adjourned the meeting at 2:40 p.m.

Eric Buermann
Governing Board Chairman
South Florida Water Management District Governing Board

Recorded By:

Cathy Widness
Administrative Assistant Senior
Governing Board and Executive Services
SFWMD